

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
DOCKET NO. _____

COMMONWEALTH

v.

DEFENDANT

**COMMONWEALTH'S MOTION FOR COURT ORDER TO RESTRICT DISCOVERY
OF ALL PERSONNEL FILES, DISCIPLINARY RECORDS, DOCUMENTS OR
INFORMATION CONTAINED THEREIN RELATING TO CHEMIST "A.D."**

The Commonwealth moves this Honorable Court to order that any personnel file, disciplinary records, documents or information contained therein relating to Chemist A.D. that are produced pursuant to Mass. R. Crim. P. 17 be subject to the following conditions:

- (1) No materials relating to A.D., including her personnel file and any records, documents or information relating in any way to the investigation of a breach of protocol by A.D., shall be duplicated in any way, including but not limited to the taking of any notes by counsel;
- (2) Any such aforementioned personnel file and any records, documents or information relating in any way to the investigation of a breach of protocol by A.D. shall be impounded and shall not, at any time and under any circumstances, be removed from the court files for this case;
- (3) Neither the contents of nor any information contained in A.D.'s personnel file and any records, documents or information relating in any way to the investigation of a breach of protocol by A.D. shall be disclosed to any person whatsoever.

In support of this motion for a protective order, the Commonwealth submits that employee and disciplinary records and the contents of such records are private. Wakefield Teachers Ass'n v. School Committee of Wakefield, 431 Mass. 792, 799-800 (2000). "Information falling within the 'personnel and medical files or information' category is absolutely exempt from disclosure." Id. at 799 (denying public records request for personnel file

and disciplinary records of public school teacher who resigned after misconduct with student).

“Only information that does not permit the identification of any individual is not exempt from disclosure.” Id. at 800.

Given the private nature of the record and the statutory protection for that privacy in the Public Records Law, G.L. c. 4, § 7, cl.26(c), the information contained in these records should remain protected under this order unless and until this Court has ruled that the information is relevant to the trial at hand and admissible at trial. Otherwise, counsel would be free to copy and publish the contents of A.D.’s private employment and disciplinary records regardless of whether the information is ever used in the trial of this case. Personnel files may contain personally embarrassing or private details of an individual employee’s life. For example, such files often include date of birth and social security numbers that could be used to commit personal identity fraud. The files may include medical diagnoses and treatments. The files may include information from disciplinary matters whether they were based on solid evidence or unsubstantiated hearsay (for example, a letter of complaint). The Commonwealth maintains that none of the information in those files is relevant or admissible at the defendant’s trial.

This Court should protect A.D.’s privacy outside of these judicial proceedings, consistently with the Wakefield decision. See also Commonwealth v. Dwyer, 448 Mass. 122, 145-146 (2006). “We emphasize that the standard for summonsing third-party records for inspection before trial is intended to guard against intimidation, harassment, and fishing expeditions for possibly relevant information.” Id. at 145. Such an order protects the defendant’s right to prepare for trial and to present evidence while at the same time protects the statutory privacy interests of A.D.

Respectfully Submitted,

DISTRICT ATTORNEY

ASSENTED TO BY:

COUNSEL FOR THE DEFENDANT

SO ORDERED:
